From: Mike Wexler
To: Microsoft ATR
Date: 1/23/02 6:06pm
Subject: Microsoft Settlement

The current settlement doesn't seem to address one of the keys issues of their monopoly. The fact that Microsoft owns the API that most commercially available software uses. If I want to from TurboTax or Finale or any number of commercial programs for PCs. I have to buy Microsoft Windows.

There are several groups trying to create competitive/compatible operating systems: WINE (http://www.codeweavers.com/home/), Lindoex (http://www.lindows.com), Wind/U (http://www.bristol.com/windu/index.html). In order to level the playing field for these and other projects. The Final Judgement should include the following provisions:

1. Notify vendors of technical requirements in advance.

Section III.H.3. of the PFJ requires vendors of competing middleware to meet "reasonable technical requirements" seven months before new releases of Windows, yet it does not require Microsoft to disclose those requirements in advance. This allows Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

2. Release API documentation ealier.

Section III.D. of the PFJ requires Microsoft to release via MSDN or similar means the documentation for the APIs used by Microsoft Middleware Products to interoperate with Windows; release would be required at the time of the final beta test of the covered middleware, and whenever a new version of Windows is sent to 150,000 beta testers. But this information would almost certainly not be released in time for competing middleware vendors to adapt their products to meet the requirements of section III.H.3, which states that competing middleware can be locked out if it fails to meet unspecified technical requirements seven months before the final beta test of a new version of Windows.

3. Document all important APIs.

The PFJ's overly narrow definitions of "Microsoft Middleware Product" and "API" means that Section III.D.'s requirement to release information about Windows interfaces would not cover many important interfaces.

4. Remove Restrictions on the Use of the Released Documentation

ISVs writing competing operating systems as outlined in Findings of Fact
(?52) sometimes have difficulty understanding various undocumented
Windows APIs. The information released under section III.D. of the PFJ
would aid those ISVs -- except that the PFJ disallows this use of the
information. Worse yet, to avoid running afoul of the PFJ, ISVs might
need to divide up their engineers into two groups: those who refer to
MSDN and work on Windows-only applications; and those who cannot refer
to MSDN because they work on applications which also run on
non-Microsoft operating systems. This would constitute retaliation
against ISVs who support competing operating systems.

If we are truely trying to create a competitive environment. Why not
have them release the windows API documentation as freely available
etext. So that anybody trying to create compatible operating systems has
free access to the specifications. Note, they would still need to
implement the APIs. This just means the specifications would be publish.
It should be required that these specifications be in enough detail to
run all of Microsoft's products and the top 100 non-microsoft commercial
applications.

5. Fully Document File Formats

No part of the PFJ obligates Microsoft to release any information about
file formats, even though undocumented Microsoft file formats form part
of the Applications Barrier to Entry (see "Findings of Fact" ?20 and ?
39).

6. Document protocols.

The protocols used to communicate between clients and servers should be
fully documented. So that applications from diverse environments can
interoperate with microsoft clients and servers. This would keep
Microsoft from leveraging monopoly in one environment (desktop OS,
Browser) to other environments (Server OS, Web Server).

7. Disclose which patents covering the Windows APIs.

Section III.I of the PFJ requires Microsoft to offer to license certain
intellectual property rights, but it does nothing to require Microsoft
to clearly announce which of its many software patents protect the
Windows APIs (perhaps in the style proposed by the W3C; see
http://www.w3.org/TR/2001/WD-patent-policy-20010816/#sec-disclosure).
This leaves Windows-compatible operating systems in an uncertain state:
are they, or are they not infringing on Microsoft software patents? This
can scare away potential users, as illustrated by this report from
Codeweavers, Inc.:

When selecting a method of porting a major application to Linux, one prospect of mine was comparing Wine [a competing implementation of some of the Windows APIs] and a toolkit called 'MainWin'. MainWin is made by Mainsoft, and Mainsoft licenses its software from Microsoft. However, this customer elected to go with the Mainsoft option instead. I was told that one of the key decision making factors was that Mainsoft representatives had stated that Microsoft had certain critical patents that Wine was violating. My customer could not risk crossing Microsoft, and declined to use Wine. I didn't even have a chance to determine which patents were supposedly violated; nor to disprove the validity of this claim.

The PFJ, by allowing this unclear legal situation to continue, is inhibiting the market acceptance of competing operating systems.